

EXHIBIT A

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23 ATTORNEYS FOR PLAINTIFF

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA

25 FOR THE COUNTY OF SANTA CLARA

26 RUSSELL BRADBERRY, individually and
 27 on behalf of a class of similarly situated
 28 individuals,

Plaintiff,

v.

MBLOX, INC., a Delaware corporation,

Defendant.

Case No. **107CV-094234**

**COMPLAINT FOR DAMAGES
 AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

CLASS ACTION

BY FAX

FILED Santa Clara Co
 09/13/07 2:39pm
 Kiri Torre
 Chief Executive Office
 By: jzenzen DTSCIV010
 R#200700091060
 CK \$320.00
 TL \$320.00
 Case: 1-07-CV-094234

JK J. Zenzen

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1 CLASS ACTION COMPLAINT

2 Plaintiff Russell Bradberry ("Bradberry"), on behalf of himself, a class and a
3 subclass, brings this class action against mBlox, Inc. ("mBlox") seeking to stop Defendant's
4 practice of causing cellular telephone customers to be billed for mobile content services that
5 the customers did not order, and to obtain redress for all persons injured by their conduct.
6 Plaintiff, for his class action complaint, alleges as follows upon personal knowledge as to
7 himself and his own acts and experiences, and, as to all other matters, upon information and
8 belief, including investigation conducted by his attorneys.

9 NATURE OF THE CASE

10 1. The increased use of cell phones has given rise to a new industry that provides
11 so-called "mobile content" services such as ringtones, text alerts, jokes, news, games, and
12 daily horoscopes to cell phone users' mobile devices. The providers of mobile content (the
13 mobile "content providers") charge for their services and cause such charges to be placed
14 directly on customers' cell phone accounts through their wireless carriers (the "carriers").
15 The carriers then bill and collect such amounts, serving as partners in these transactions,
16 retaining a portion of all revenue that they collect on account of mobile content services.

17 2. Because mobile content providers are typically unable to establish a direct
18 billing and content delivery relationship with the carriers, they most often turn to one of a
19 handful of companies known in the industry as "aggregators," such as mBlox, that act as
20 billing intermediaries without whom the mobile content providers would generally be unable
21 to provide and bill for their mobile content services.

22 3. While aggregators such as mBlox charge their content provider clients some
23 upfront fees, their revenue is primarily generated through a "revenue share" on transactions
24 for which they bill the carriers' customers: each time a charge is incurred in connection with
25 an alleged purchase of mobile content services offered by a content provider, the aggregator
26 and the content provider cause the charge to be billed directly on the cellular telephone bill of
27

1 the carrier's customer who currently owns and/or uses the telephone number claimed to be
2 associated with that purchase.

3 4. The carrier then bills and collects the charges from its current customer,
4 retains about 20% to 50% of the proceeds as its "revenue share" and then remits the balance
5 to the aggregator, i.e., mBlox, who retains a percentage of the balance in the form of its own
6 "revenue share" and who then remits the balance to its content provider client.

7 5. In a widespread industry practice little known by those outside the industry,
8 but known to Defendant, carriers such as AT&T Mobility, LLC d/b/a Cingular Wireless
9 ("Cingular"), Cellco Partnership d/b/a Verizon Wireless ("Verizon"), Sprint-Nextel
10 Corporation ("Sprint") and T-Mobile USA, Inc. ("T-Mobile"), among many others, routinely
11 "recycle" so-called "dirty" telephone numbers to their customers when they sign up for new
12 cellular telephone service. The numbers are "recycled" in that they were previously owned
13 and/or used by other persons or entities. The numbers are "dirty" in that they are
14 encumbered with pre-existing billing obligations for products and services authorized to be
15 purchased, if at all, by the previous owners and/or users of those numbers.

16 6. Despite its knowledge about the problem of recycled dirty numbers,
17 Defendant has helped create a system through which cell phone users are billed for mobile
18 content services ordered not by them, but by the previous owners of their cell phone
19 numbers.

20 7. As a result, for years Defendant has systematically, repeatedly and without
21 authorization caused charges to be placed on the cell phone bills of thousands of consumers
22 across the country for content that was never authorized to be purchased by the current
23 owners of the affected phone numbers, but rather, if at all, by the previous owners of such
24 cell phone numbers, and it has profited enormously from its wrongful conduct, in violation
25 of: (a) the common law of unjust enrichment; (b) the common law of tortious interference
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1 with a contract; and (c) in violation of California Business and Professions Code section
2 17200 consumer fraud provisions.

3 8. Plaintiff seeks on behalf of himself and the class members, money damages,
4 disgorgement, injunctive and declaratory relief, costs, and reasonable attorney's fees.

5 **PARTIES**

6 9. Plaintiff Russell Bradberry is a citizen of California.

7 10. Defendant mBlox, Inc. ("mBlox"), known in the industry as an "aggregator,"
8 is a provider of mobile payments processing and is self-described as the "world's largest
9 mobile transactions network." mBlox is a Delaware corporation with its headquarters and
10 principal place of business in the State of California. mBlox does business throughout the
11 United States, including the State of California and this County.

12 **JURISDICTION**

13 11. This Court has jurisdiction over the causes of action asserted herein pursuant
14 to the California Constitution, Article VI, §10, because this case is a cause not given by
15 statute to other trial courts.

16 12. This Court has jurisdiction over Defendant pursuant to Code of Civil
17 Procedure section § 410.10 because Defendant resides in and/or conducts business in the
18 State of California and/or many of Defendant's wrongful acts arose or emanated from
19 California.

20 **VENUE**

21 13. Venue is proper in this Court pursuant to Code of Civil Procedure § 395.5
22 because Defendant's principal place of business is in this County.

23 **THE PROBLEM OF RECYLED DIRTY CELL PHONE NUMBERS**

24 14. Cell phone customers are assigned unique phone numbers for their phones,
25 just like traditional land-lines.

1 15. However, unlike traditional phones people can use cell phones to pay for
2 certain third-party provided services, like, for example, "ringtones," subscriptions for
3 horoscopes, jokes or stock quotes, sent periodically to customers' cell phones, etc. (A
4 ringtone is simply the sound made by a telephone to indicate an incoming call. The term is
5 most often used to refer to the customizable sounds available on mobile phones.)

6 16. These services generally renew automatically each month and the resulting
7 charges are included on the customer's cell phone bill.

8 17. The instant lawsuit flows from what happens when a carrier reissues (or
9 "recycles") a cellular number previously assigned to one of its customers that has been
10 abandoned. (Customers abandon numbers for many different reasons, e.g. they move to a
11 different area code, they change carriers, they no longer want one of their cell phones, or they
12 want a different phone number.)

13 18. Defendant knows that these abandoned numbers are often encumbered with
14 preexisting subscriptions to mobile content services thus rendering these numbers "dirty."

15 19. Nevertheless, specifically in order to bilk cell phone customers out of money,
16 Defendant has refused to set up procedures to insure that cell phone customers are not
17 charged for preexisting subscriptions authorized, if at all, by a previous owner or user of the
18 number.

19 20. Thus, when a telephone number is reassigned to a new customer, Defendant
20 continues to charge the new customer for subscriptions purchased by the old customers.

21 **THE FACTS RELATING TO THE NAMED PLAINTIFF**

22 21. On November 2, 2005, Plaintiff visited the store of an authorized T-Mobile
23 sales representative located in Visalia, California to purchase new cell phone service for his
24 personal use.

25 22. On that same day, in exchange for a T-Mobile cell phone plan of 600
26 "anytime" minutes, Plaintiff agreed to pay T-Mobile \$39.99 each month for a period of 12
27

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1 months. (A copy of T-Mobile's Service Agreement with Plaintiff is attached hereto as
2 Exhibit A.)

3 23. T-Mobile's Service Agreement, including the documents referenced therein,
4 are classic contracts of adhesion. That is, T-Mobile drafts the boilerplate terms -- including
5 the purported class action waiver and arbitration clauses -- and offers them to potential
6 customers purely on a take-it-or-leave-it basis. Further, Mr. Bradberry did not see and was
7 not given a copy of the "Terms and Conditions" referenced in the Service Agreement either
8 prior to signing the agreement or at the time of signing.

9 24. Upon execution of his Service Agreement and activation of his cellular
10 telephone account, T-Mobile provided Plaintiff a cellular phone number or "GSM #" (that is,
11 a Global System for Mobile Communications number) of "tmo+619446----." (*Redacted.*)

12 25. Unbeknownst to Plaintiff, T-Mobile provided him with a recycled "dirty"
13 phone number -- one saddled with preexisting obligations, encumbrances and billing
14 arrangements for products and services provided by Defendant that were authorized to be
15 purchased, if at all, by the previous owner(s) and/or user(s) of that number.

16 26. Thus, beginning on or about November 2, 2005 -- the same day Plaintiff
17 obtained his cell phone number and started receiving service from T-Mobile -- and
18 continuing through at least April 28, 2006, Plaintiff's cell phone received multiple unwanted
19 "premium" text message calls on a near daily basis from Defendant and/or Defendant's client
20 Cellfish Media, LLC f/k/a Lagadere Interactive North America, Inc. ("Cellfish").
21 Simultaneously, Plaintiff's cell phone account incurred multiple "premium" text message
22 charges on a near daily basis from Defendant. "Premium" text messages are those that
23 include various forms of software such as ringtones, or as in Plaintiff's case, a text message
24 chatting service.

25 27. Throughout the relevant period, Plaintiff received dozens of such messages.
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1 28. At no time during the relevant period did Plaintiff authorize the purchase of
2 said products and services provided by Defendant and its client and at no time did Plaintiff
3 consent to either Defendant's or its client Cellfish's sending of text messages to his cellular
4 telephone.

5 29. Throughout the relevant time period, T-Mobile billed Plaintiff for "premium"
6 text messaging charges of \$0.50 for each of the incoming "premium" text messages
7 Defendant sent to Plaintiff, in addition to T-Mobile's standard charge of \$0.05 per each
8 incoming text message.

9 30. At no time did Plaintiff authorize T-Mobile, Defendant or anyone else to bill
10 him for those charges.

11 31. Plaintiff's counsel later learned that the purported authorization to be billed
12 for Defendant's charges was obtained from an unidentified person with the same "GSM #"
13 eventually assigned by T-Mobile to Plaintiff ("tmo+6194468xxx"); however, the
14 authorization for the subject charges was obtained on July 13, 2005 – a date more than three
15 months *prior* to the time that Plaintiff signed his Service Agreement with T-Mobile, obtained
16 that same cell phone number, or started receiving cell phone service.

17 32. Plaintiff could not possibly have authorized the charges for which he was
18 being billed. He did not have any account with T-Mobile at that time. Indeed, from May
19 2005 until October 2005, Plaintiff was out of the country in the Persian Gulf serving in the
20 United States Navy aboard the U.S.S. Nimitz.

21 **DEFENDANT BILLED AND COLLECTED MILLIONS OF**
22 **DOLLARS IN UNAUTHORIZED MOBILE CONTENT CHARGES**

23 33. Through mBlox's services, its end-to-end technology platform and other
24 value-added services, it has become a one-stop shop for numerous third-party mobile content
25 providers such as Cellfish, and carriers such as T-Mobile, empowering them to take
26 advantage of wireless technology as a content delivery, marketing and communications
27

1 channel, while carving out a role for itself as a very critical intermediary in this rapidly
2 growing industry.

3 34. In order to tap into the emerging wireless content marketplace and make
4 content services available to wireless consumers, content providers must first obtain access to
5 wireless carriers' mobile communications networks and they frequently do so by
6 "partnering" with intermediary companies such as mBlox that provide the content providers
7 direct access to the carriers through existing relationships.

8 35. mBlox has developed a vast distribution system that integrates into the
9 wireless networks of some of the largest wireless carriers nationwide, including Verizon,
10 Cingular, Sprint Nextel, Alltel, US Cellular, among many others.

11 36. While aggregators such as mBlox charge their content provider clients some
12 upfront fees, their revenue is primarily generated through a "revenue share" on transactions
13 for which they bill the carriers' customers: each time a charge is incurred in connection with
14 an alleged purchase of mobile content services offered by a content provider, the aggregator
15 and the content provider cause the charge to be billed directly on the cellular telephone bill of
16 the carrier's customer who currently owns and/or uses the telephone number claimed to be
17 associated with the purchase.

18 37. The carrier then bills and collects the charges from its current customer,
19 retains about 20% to 50% of the proceeds as its "revenue share" and then remits the balance
20 to the aggregator, e.g., mBlox, who retains a percentage of the balance in the form of its own
21 "revenue share" and then remits the balance to its content provider client, e.g., Cellfish.

22 38. mBlox has registered hundreds of millions of transactions and processed
23 hundreds of millions of dollars in transactions over the years and has profited enormously
24 from its arrangement with its carrier partners and its content provider partners.

25 39. As Defendant knows, the carriers routinely "recycle" so-called "dirty"
26 telephone numbers to their customers when they sign up for new cellular telephone service.

1 The numbers are "recycled" in that they were previously owned and/or used by other persons
2 or entities. The numbers are "dirty" in that they are encumbered with pre-existing billing
3 obligations and subscriptions for products and services authorized to be purchased, if at all,
4 by the previous owners and/or users of those numbers.

5 40. Defendant has not only sanctioned this illegal billing, it has actively and
6 knowingly promoted it by, *inter alia*, actively negotiating and facilitating partnerships
7 between and amongst each other and/or other carriers, aggregators and content providers
8 wherein (1) the content providers and aggregators do not adequately verify whether a
9 telephone number has been recycled; (2) the carriers do not adequately verify the details of
10 the purported authorization to place charges on a cell phone customer's bill, including the
11 identity of the person who supposedly consented to the service, the date such consent was
12 obtained or the manner in which it was obtained; and/or (3) charges are illegally inserted into
13 customers' billing statements for subscriptions authorized by previous owners of the
14 telephone number.

15 41. Defendant has intentionally helped create a system wherein each participant
16 has a piece of the information and thus can, at least, claim (false as it is) that the blame rests
17 solely at the feet of another. Such system constitutes a deliberate and wilful scheme to cheat
18 large numbers of people out of small amounts of money.

19 42. As a direct result, Defendant has profited enormously from this illegal
20 practice, all the while being able to maintain plausible deniability.

21 CLASS ALLEGATIONS

22 43. Plaintiff brings this action, pursuant to Code of Civil Procedure § 382 on
23 behalf of himself, a class and a subclass. Those classes are defined as follows:

24 A. The "Class:" consisting of all wireless telephone subscribers in the nation
25 who were charged by mBlox for mobile content services not authorized by the existing
26 owner of the telephone number, but, rather, if at all, by a prior owner or user of the number;

1 provided, however, that the following are excluded from this proposed Class: (i) the
2 defendant, and (ii) any relative or employee of defendant.

3 B. The "Sub-Class:" a class consisting of all members of the Class who
4 entered into subscription contracts within the state of California.

5 44. The Classes each consist of thousands of individuals and other entities,
6 making joinder impractical, in satisfaction of Code of Civil Procedure § 382.

7 45. The claims of Plaintiff are typical of the claims of all of the other members of
8 the respective Classes.

9 46. Plaintiff will fairly and adequately represent and protect the interests of the
10 other members of the respective classes. Plaintiff has retained counsel with substantial
11 experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are
12 committed to vigorously prosecuting this action on behalf of the members of the classes, and
13 have the financial resources to do so. Neither Plaintiff nor his counsel have any interest
14 adverse to those of the other members of the Classes.

15 47. Absent a class action, most members of the Classes would find the cost of
16 litigating their claims to be prohibitive, and will have no effective remedy. The class
17 treatment of common questions of law and fact is also superior to multiple individual actions
18 or piecemeal litigation in that it conserves the resources of the courts and the litigants, and
19 promotes consistency and efficiency of adjudication.

20 48. Defendant has acted and failed to act on grounds generally applicable to the
21 Plaintiff and the other members of the respective classes, requiring the Court's imposition of
22 uniform relief to ensure compatible standards of conduct toward the members of the Classes.

23 49. The factual and legal bases of Defendant's liability to Plaintiff and to the other
24 members of the respective Classes are the same, resulting in injury to the Plaintiff and to all
25 of the other members of the Classes. Plaintiff and the other Class members have all suffered
26 harm and damages as a result of Defendant's unlawful and wrongful conduct.

50. There are many questions of law and fact common to the claims of Plaintiff and the other members of the respective Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Class include but are not limited to the following:

(a) Whether mBlox has unjustly received money belonging to Plaintiff and the Class and whether under principles of equity and good conscience, mBlox should not be permitted to retain it;

(b) Whether mBlox tortiously interfered with Plaintiff's and the Class's contracts with their wireless carriers by causing them to be charged for products and services by their carrier that were authorized, if at all, by the previous owner and/or user of their telephone number.

51. Common questions for the Sub-Class include:

(a) Whether mBlox's conduct described herein violates California Business and Professions Code sections 17200, *et seq.*

COUNT I

(Restitution/Unjust Enrichment on behalf of the Class)

52. Plaintiff incorporates by reference the foregoing allegations.

53. A benefit has been conferred upon Defendant by Plaintiff and the Class. Defendant has received and retains money belonging to Plaintiff and the Class resulting from its billing and collecting of millions of dollars in unauthorized third party mobile content charges, and in particular, its practice of systematically, repeatedly and without authorization, causing Plaintiff and the Classes of cellular telephone customers to be billed by their cellular carriers for mobile content services authorized to be purchased, if at all, by the previous owners and/or users of such telephone numbers.

54. Defendant appreciates or has knowledge of said benefit.

1 55. Under principles of equity and good conscience, Defendant should not be
2 permitted to retain the money belonging to Plaintiff and the Class which Defendant has
3 unjustly received as a result of its actions.

4 **COUNT II**

5 **(Tortious Interference with a Contract on behalf of the Class)**

6 56. Plaintiff incorporates by reference the foregoing allegations.

7 57. Plaintiff and the Class had contractual relationships with their wireless carriers
8 whereby they agreed to pay a certain sum of money in exchange for activation of their
9 cellular telephone accounts and their carriers' promise to provide various communication and
10 related services to Plaintiff and the Class and to bill Plaintiff and the Class only for products
11 or services the purchase of which they had authorized.

12 58. Defendant knew of these contractual relationships and intended to and did
13 induce a breach or disruption of the contractual relationships.

14 59. Defendant intentionally interfered with said contractual relationships through
15 improper motives and/or means by knowingly and/or recklessly repeatedly causing
16 unauthorized charges to be placed on the cellular telephone bills of cellular telephone owners
17 across the nation.

18 60. Plaintiff and the Class have suffered loss as a direct result of Defendant's
19 conduct.

20 **COUNT III**

21 **(Unlawful, Unfair and Deceptive Business Practices in Violation of California
22 Business & Professions Code § 17200, et seq. on behalf of the Sub-Class)**

23 61. Plaintiff incorporates by reference the foregoing allegations.

24 62. The Unfair Business Practices Act proscribes unfair business competition and
25 defines same to include any "unfair," "unlawful," or "fraudulent" business act or practice.
26 California Business & Professions Code §17200 *et seq.*

27
28 **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

64. Defendant, through its acts of unfair competition, has obtained money from Plaintiff and members of the proposed Class. Plaintiff and the members of the Sub-Class ask that this Court restore this money to them and enjoin Defendant from continuing its illegal practices.

65. Such conduct is ongoing and continues to this date. Plaintiff, the Sub-Class members and the general public are therefore entitled to the relief described herein.

WHEREFORE, Plaintiff Russell Bradberry, on behalf of himself and the respective Classes, prays for the following relief:

a) Certify this case as a class action on behalf of the Classes and as defined above and appoint Russell Bradberry Class Representative, and appoint Jay Edelson and John G. Jacobs, as co-lead counsel;

b) Declare that the actions of Defendant, as set out above, constitute unjust enrichment, tortious interference with a contract, and are in violation of California Business and Professions Code §17200;

c) Enter judgment against Defendant for all economic, monetary, actual, consequential, and compensatory damages caused by Defendant's conduct, and if their conduct is proved willful award Plaintiff and the Classes exemplary damages;

f) Award Plaintiff and the Classes reasonable costs and attorneys' fees;

g) Award Plaintiff and the Classes pre- and post-judgment interest;

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

- 1 h) Enter judgment for injunctive and/or declaratory relief as is
2 necessary to protect the interests of Plaintiff and the Classes;
3 i) Award such other and further relief as equity and justice may
4 require.

5 **JURY DEMAND**

6 Plaintiff requests trial by jury of all claims that can be so tried.

7
8 Respectfully submitted,

9 Dated: September 13, 2007

LAW OFFICES OF TERRY M. GORDON

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13 By: 

TERRY M. GORDON
One of the Attorneys for RUSSELL
BRADBERRY, individually and on
behalf of a class of similarly situated
individuals

EXHIBIT B

LAW OFFICES OF TERRY M. GORDON

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September 13, 2007

Corporation Service Company
d/b/a CSC – Lawyers Incorporating Service
P. O. Box 526036
Sacramento, California 95852

Re: *Russell Bradberry v. mBlox, Inc.*
Santa Clara County Superior Court, Case No. 107CV-094234

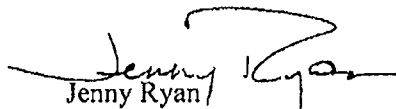
CSC – Agent for Service of Process on behalf of
mBlox, Inc., a Delaware corporation

Dear Sir or Madam:

CSC is designated as the Agent for Service of Process on behalf of mBlox, Inc., a Delaware corporation. In that capacity, we are serving Defendant mBlox, Inc., through, CSC, with the enclosed Summons, Complaint, Civil Lawsuit Notice, and ADR Information sheet in the above-referenced action. Please acknowledge receipt of service by signing the enclosed Notice and Acknowledgment of Receipt and returning the signed original to our office at your earliest convenience. If we do not receive the signed Acknowledgment within 20 days, we will proceed with taking the necessary steps to serve the papers personally on Defendant.

Please call should you have any questions. Thank you for your attention to this.

Sincerely,



Jenny Ryan
Legal Assistant to Terry M. Gordon

/jr
Enclosures

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Terry M. Gordon, SBN 75604 Law Offices of Terry M. Gordon Three Harbor Drive, Suite 317 Sausalito, CA 94965		FOR COURT USE ONLY
TELEPHONE NO.: 415-331-3601 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff Russell Bradberry	FAX NO. (Optional): 415-331-1225	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 N. First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:		
PLAINTIFF/PETITIONER: RUSSELL BRADBERRY DEFENDANT/RESPONDENT: MBLOX, INC.		
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL		CASE NUMBER: 107CV-094234

TO (insert name of party being served): mBlox, Inc., through CSC, its Agent for Service of Process

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: September 17, 2007

Jenny Ryan

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

1. ☒ A copy of the summons and of the complaint.
2. ☒ Other (specify):

Civil Lawsuit Notice issued by Court 9/13/07

Superior Court of California, County of Santa Clara, Alternative Dispute Resolution Information Sheet/Civil Division

(To be completed by recipient):

Date this form is signed:

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

MBLOX, INC., a Delaware corporation

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RUSSELL BRADBERRY, individually and on behalf of a class of
similarly situated individuals

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED!
FILED

SEP 13 07

KIRI TORRE
CLERK EXEC. OFFICER/CLERK
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
Zenzen

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Santa Clara County Superior Court
191 N. First Street
San Jose, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Terry M. Gordon, Law Offices of Terry M. Gordon
Three Harbor Drive, Suite 317, Sausalito, CA 94965, (415) 331-3601

DATE:
(Fecha) SEP 13 2007

Kiri Torre

Chief Executive Officer/Clerk

Clerk, by
(Secretario)

J. Zenzen

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

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2 LAW OFFICES OF TERRY M. GORDON
3 Three Harbor Drive, Suite 317
4 Sausalito, California 94965
5 Telephone: (415) 331-3601
6 Facsimile: (415) 331-1225

7 JOHN G. JACOBS (*PRO HAC VICE* PENDING)
8 BRYAN G. KOLTON (*PRO HAC VICE* PENDING)
9 THE JACOBS LAW FIRM, CHTD.
10 122 South Michigan Avenue
11 Suite 1850
12 Chicago, Illinois 60603
13 Telephone: (312) 427-4000
14 Facsimile: (312) 427-1850

15 JAY EDELSON (*PRO HAC VICE* PENDING)
16 MYLES MCGUIRE (*PRO HAC VICE* PENDING)
17 BLIM & EDELSON, LLC
18 53 West Jackson Boulevard
19 Suite 1642
20 Chicago, Illinois 60604
21 Telephone: (312) 913-9400
22 Facsimile: (312) 913-9401

23 ATTORNEYS-FOR PLAINTIFF

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA
25 FOR THE COUNTY OF SANTA CLARA

26 RUSSELL BRADBERRY, individually and
27 on behalf of a class of similarly situated
28 individuals,

Plaintiff,

v.

MBLOX, INC., a Delaware corporation,

Defendant.

Case No. **107CV-094234**

COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

CLASS ACTION

BY FAX

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

ENDORSED
FILED

SEP 13 07

KIRI TORRE
DEP. EXEC. OFFICER/CLERK
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
J. Zenzen

1 the carrier's customer who currently owns and/or uses the telephone number claimed to be
2 associated with that purchase.

3 4. The carrier then bills and collects the charges from its current customer,
4 retains about 20% to 50% of the proceeds as its "revenue share" and then remits the balance
5 to the aggregator, i.e., mBlox, who retains a percentage of the balance in the form of its own
6 "revenue share" and who then remits the balance to its content provider client.

7 5. In a widespread industry practice little known by those outside the industry,
8 but known to Defendant, carriers such as AT&T Mobility, LLC d/b/a Cingular Wireless
9 ("Cingular"), Cellco Partnership d/b/a Verizon Wireless ("Verizon"), Sprint-Nextel
10 Corporation ("Sprint") and T-Mobile USA, Inc. ("T-Mobile"), among many others, routinely
11 "recycle" so-called "dirty" telephone numbers to their customers when they sign up for new
12 cellular telephone service. The numbers are "recycled" in that they were previously owned
13 and/or used by other persons or entities. The numbers are "dirty" in that they are
14 encumbered with pre-existing billing obligations for products and services authorized to be
15 purchased, if at all, by the previous owners and/or users of those numbers.

16 6. Despite its knowledge about the problem of recycled dirty numbers,
17 Defendant has helped create a system through which cell phone users are billed for mobile
18 content services ordered not by them, but by the previous owners of their cell phone
19 numbers.

20 7. As a result, for years Defendant has systematically, repeatedly and without
21 authorization caused charges to be placed on the cell phone bills of thousands of consumers
22 across the country for content that was never authorized to be purchased by the current
23 owners of the affected phone numbers, but rather, if at all, by the previous owners of such
24 cell phone numbers, and it has profited enormously from its wrongful conduct, in violation
25 of: (a) the common law of unjust enrichment; (b) the common law of tortious interference
26
27
28

1 with a contract; and (c) in violation of California Business and Professions Code section
2 17200 consumer fraud provisions.

3 8. Plaintiff seeks on behalf of himself and the class members, money damages,
4 disgorgement, injunctive and declaratory relief, costs, and reasonable attorney's fees.

5 **PARTIES**

6 9. Plaintiff Russell Bradberry is a citizen of California.

7 10. Defendant mBlox, Inc. ("mBlox"), known in the industry as an "aggregator,"
8 is a provider of mobile payments processing and is self-described as the "world's largest
9 mobile transactions network." mBlox is a Delaware corporation with its headquarters and
10 principal place of business in the State of California. mBlox does business throughout the
11 United States, including the State of California and this County.

12 **JURISDICTION**

13 11. This Court has jurisdiction over the causes of action asserted herein pursuant
14 to the California Constitution, Article VI, §10, because this case is a cause not given by
15 statute to other trial courts.

16 12. This Court has jurisdiction over Defendant pursuant to Code of Civil
17 Procedure section § 410.10 because Defendant resides in and/or conducts business in the
18 State of California and/or many of Defendant's wrongful acts arose or emanated from
19 California.

20 **VENUE**

21 13. Venue is proper in this Court pursuant to Code of Civil Procedure § 395.5
22 because Defendant's principal place of business is in this County.

23 **THE PROBLEM OF RECYLED DIRTY CELL PHONE NUMBERS**

24 14. Cell phone customers are assigned unique phone numbers for their phones,
25 just like traditional land-lines.

1 15. However, unlike traditional phones people can use cell phones to pay for
2 certain third-party provided services, like, for example, "ringtones," subscriptions for
3 horoscopes, jokes or stock quotes, sent periodically to customers' cell phones, etc. (A
4 ringtone is simply the sound made by a telephone to indicate an incoming call. The term is
5 most often used to refer to the customizable sounds available on mobile phones.)

6 16. These services generally renew automatically each month and the resulting
7 charges are included on the customer's cell phone bill.

8 17. The instant lawsuit flows from what happens when a carrier reissues (or
9 "recycles") a cellular number previously assigned to one of its customers that has been
10 abandoned. (Customers abandon numbers for many different reasons, e.g. they move to a
11 different area code, they change carriers, they no longer want one of their cell phones, or they
12 want a different phone number.)

13 18. Defendant knows that these abandoned numbers are often encumbered with
14 preexisting subscriptions to mobile content services thus rendering these numbers "dirty."

15 19. Nevertheless, specifically in order to bilk cell phone customers out of money,
16 Defendant has refused to set up procedures to insure that cell phone customers are not
17 charged for preexisting subscriptions authorized, if at all, by a previous owner or user of the
18 number.

19 20. Thus, when a telephone number is reassigned to a new customer, Defendant
20 continues to charge the new customer for subscriptions purchased by the old customers.

21 **THE FACTS RELATING TO THE NAMED PLAINTIFF**

22 21. On November 2, 2005, Plaintiff visited the store of an authorized T-Mobile
23 sales representative located in Visalia, California to purchase new cell phone service for his
24 personal use.

25 22. On that same day, in exchange for a T-Mobile cell phone plan of 600
26 "anytime" minutes, Plaintiff agreed to pay T-Mobile \$39.99 each month for a period of 12
27

1 months. (A copy of T-Mobile's Service Agreement with Plaintiff is attached hereto as
2 Exhibit A.)

3 23. T-Mobile's Service Agreement, including the documents referenced therein;
4 are classic contracts of adhesion. That is, T-Mobile drafts the boilerplate terms – including
5 the purported class action waiver and arbitration clauses – and offers them to potential
6 customers purely on a take-it-or-leave-it basis. Further, Mr. Bradberry did not see and was
7 not given a copy of the "Terms and Conditions" referenced in the Service Agreement either
8 prior to signing the agreement or at the time of signing.

9 24. Upon execution of his Service Agreement and activation of his cellular
10 telephone account, T-Mobile provided Plaintiff a cellular phone number or "GSM #" (that is,
11 a Global System for Mobile Communications number) of "tmo+619446----," (*Redacted.*)

12 25. Unbeknownst to Plaintiff, T-Mobile provided him with a recycled "dirty"
13 phone number -- one saddled with preexisting obligations, encumbrances and billing
14 arrangements for products and services provided by Defendant that were authorized to be
15 purchased, if at all, by the previous owner(s) and/or user(s) of that number.

16 26. Thus, beginning on or about November 2, 2005 -- the same day Plaintiff
17 obtained his cell phone number and started receiving service from T-Mobile -- and
18 continuing through at least April 28, 2006, Plaintiff's cell phone received multiple unwanted
19 "premium" text message calls on a near daily basis from Defendant and/or Defendant's client
20 Cellfish Media, LLC f/k/a Lagadere Interactive North America, Inc. ("Cellfish").
21 Simultaneously, Plaintiff's cell phone account incurred multiple "premium" text message
22 charges on a near daily basis from Defendant. "Premium" text messages are those that
23 include various forms of software such as ringtones, or as in Plaintiff's case, a text message
24 chatting service.

25 27. Throughout the relevant period, Plaintiff received dozens of such messages.

1 28. At no time during the relevant period did Plaintiff authorize the purchase of
2 said products and services provided by Defendant and its client and at no time did Plaintiff
3 consent to either Defendant's or its client Cellfish's sending of text messages to his cellular
4 telephone.

5 29. Throughout the relevant time period, T-Mobile billed Plaintiff for "premium"
6 text messaging charges of \$0.50 for each of the incoming "premium" text messages
7 Defendant sent to Plaintiff, in addition to T-Mobile's standard charge of \$0.05 per each
8 incoming text message.

9 30. At no time did Plaintiff authorize T-Mobile, Defendant or anyone else to bill
10 him for those charges.

11 31. Plaintiff's counsel later learned that the purported authorization to be billed
12 for Defendant's charges was obtained from an unidentified person with the same "GSM #"
13 eventually assigned by T-Mobile to Plaintiff ("tmo+6194468xxx"); however, the
14 authorization for the subject charges was obtained on July 13, 2005 – a date more than three
15 months *prior* to the time that Plaintiff signed his Service Agreement with T-Mobile, obtained
16 that same cell phone number, or started receiving cell phone service.

17 32. Plaintiff could not possibly have authorized the charges for which he was
18 being billed. He did not have any account with T-Mobile at that time. Indeed, from May
19 2005 until October 2005, Plaintiff was out of the country in the Persian Gulf serving in the
20 United States Navy aboard the U.S.S. Nimitz.

21 **DEFENDANT BILLED AND COLLECTED MILLIONS OF**
22 **DOLLARS IN UNAUTHORIZED MOBILE CONTENT CHARGES**

23 33. Through mBlox's services, its end-to-end technology platform and other
24 value-added services, it has become a one-stop shop for numerous third-party mobile content
25 providers such as Cellfish, and carriers such as T-Mobile, empowering them to take
26 advantage of wireless technology as a content delivery, marketing and communications
27

1 channel, while carving out a role for itself as a very critical intermediary in this rapidly
2 growing industry.

3 34. In order to tap into the emerging wireless content marketplace and make
4 content services available to wireless consumers, content providers must first obtain access to
5 wireless carriers' mobile communications networks and they frequently do so by
6 "partnering" with intermediary companies such as mBlox that provide the content providers
7 direct access to the carriers through existing relationships.

8 35. mBlox has developed a vast distribution system that integrates into the
9 wireless networks of some of the largest wireless carriers nationwide, including Verizon,
10 Cingular, Sprint Nextel, Alltel, US Cellular, among many others.

11 36. While aggregators such as mBlox charge their content provider clients some
12 upfront fees, their revenue is primarily generated through a "revenue share" on transactions
13 for which they bill the carriers' customers: each time a charge is incurred in connection with
14 an alleged purchase of mobile content services offered by a content provider, the aggregator
15 and the content provider cause the charge to be billed directly on the cellular telephone bill of
16 the carrier's customer who currently owns and/or uses the telephone number claimed to be
17 associated with the purchase.

18 37. The carrier then bills and collects the charges from its current customer,
19 retains about 20% to 50% of the proceeds as its "revenue share" and then remits the balance
20 to the aggregator, e.g., mBlox, who retains a percentage of the balance in the form of its own
21 "revenue share" and then remits the balance to its content provider client, e.g., Cellfish.

22 38. mBlox has registered hundreds of millions of transactions and processed
23 hundreds of millions of dollars in transactions over the years and has profited enormously
24 from its arrangement with its carrier partners and its content provider partners.

25 39. As Defendant knows, the carriers routinely "recycle" so-called "dirty"
26 telephone numbers to their customers when they sign up for new cellular telephone service.

1 The numbers are "recycled" in that they were previously owned and/or used by other persons
2 or entities. The numbers are "dirty" in that they are encumbered with pre-existing billing
3 obligations and subscriptions for products and services authorized to be purchased, if at all,
4 by the previous owners and/or users of those numbers.

5 40. Defendant has not only sanctioned this illegal billing, it has actively and
6 knowingly promoted it by, *inter alia*, actively negotiating and facilitating partnerships
7 between and amongst each other and/or other carriers, aggregators and content providers
8 wherein (1) the content providers and aggregators do not adequately verify whether a
9 telephone number has been recycled; (2) the carriers do not adequately verify the details of
10 the purported authorization to place charges on a cell phone customer's bill, including the
11 identity of the person who supposedly consented to the service, the date such consent was
12 obtained or the manner in which it was obtained; and/or (3) charges are illegally inserted into
13 customers' billing statements for subscriptions authorized by previous owners of the
14 telephone number.

15 41. Defendant has intentionally helped create a system wherein each participant
16 has a piece of the information and thus can, at least, claim (false as it is) that the blame rests
17 solely at the feet of another. Such system constitutes a deliberate and wilful scheme to cheat
18 large numbers of people out of small amounts of money.

19 42. As a direct result, Defendant has profited enormously from this illegal
20 practice, all the while being able to maintain plausible deniability.

21 CLASS ALLEGATIONS

22 43. Plaintiff brings this action, pursuant to Code of Civil Procedure § 382 on
23 behalf of himself, a class and a subclass. Those classes are defined as follows:

24 A. The "Class:" consisting of all wireless telephone subscribers in the nation
25 who were charged by mBlox for mobile content services not authorized by the existing
26 owner of the telephone number, but, rather, if at all, by a prior owner or user of the number;
27

1 provided, however, that the following are excluded from this proposed Class: (i) the
2 defendant, and (ii) any relative or employee of defendant.

3 B. The "Sub-Class;" a class consisting of all members of the Class who
4 entered into subscription contracts within the state of California.

5 44. The Classes each consist of thousands of individuals and other entities,
6 making joinder impractical, in satisfaction of Code of Civil Procedure § 382.

7 45. The claims of Plaintiff are typical of the claims of all of the other members of
8 the respective Classes.

9 46. Plaintiff will fairly and adequately represent and protect the interests of the
10 other members of the respective classes. Plaintiff has retained counsel with substantial
11 experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are
12 committed to vigorously prosecuting this action on behalf of the members of the classes, and
13 have the financial resources to do so. Neither Plaintiff nor his counsel have any interest
14 adverse to those of the other members of the Classes.

15 47. Absent a class action, most members of the Classes would find the cost of
16 litigating their claims to be prohibitive, and will have no effective remedy. The class
17 treatment of common questions of law and fact is also superior to multiple individual actions
18 or piecemeal litigation in that it conserves the resources of the courts and the litigants, and
19 promotes consistency and efficiency of adjudication.

20 48. Defendant has acted and failed to act on grounds generally applicable to the
21 Plaintiff and the other members of the respective classes, requiring the Court's imposition of
22 uniform relief to ensure compatible standards of conduct toward the members of the Classes.

23 49. The factual and legal bases of Defendant's liability to Plaintiff and to the other
24 members of the respective Classes are the same, resulting in injury to the Plaintiff and to all
25 of the other members of the Classes. Plaintiff and the other Class members have all suffered
26 harm and damages as a result of Defendant's unlawful and wrongful conduct.

1 55. Under principles of equity and good conscience, Defendant should not be
2 permitted to retain the money belonging to Plaintiff and the Class which Defendant has
3 unjustly received as a result of its actions.

4 **COUNT II**

5 **(Tortious Interference with a Contract on behalf of the Class)**

6 56. Plaintiff incorporates by reference the foregoing allegations.

7 57. Plaintiff and the Class had contractual relationships with their wireless carriers
8 whereby they agreed to pay a certain sum of money in exchange for activation of their
9 cellular telephone accounts and their carriers' promise to provide various communication and
10 related services to Plaintiff and the Class and to bill Plaintiff and the Class only for products
11 or services the purchase of which they had authorized.

12 58. Defendant knew of these contractual relationships and intended to and did
13 induce a breach or disruption of the contractual relationships.

14 59. Defendant intentionally interfered with said contractual relationships through
15 improper motives and/or means by knowingly and/or recklessly repeatedly causing
16 unauthorized charges to be placed on the cellular telephone bills of cellular telephone owners
17 across the nation.

18 60. Plaintiff and the Class have suffered loss as a direct result of Defendant's
19 conduct.

20 **COUNT III**

21 **(Unlawful, Unfair and Deceptive Business Practices in Violation of California
22 Business & Professions Code § 17200, et seq. on behalf of the Sub-Class)**

23 61. Plaintiff incorporates by reference the foregoing allegations.

24 62. The Unfair Business Practices Act proscribes unfair business competition and
25 defines same to include any "unfair," "unlawful," or "fraudulent" business act or practice.
26 California Business & Professions Code §17200 *et seq.*
27
28

- 1 h) Enter judgment for injunctive and/or declaratory relief as is
2 necessary to protect the interests of Plaintiff and the Classes;
3 i) Award such other and further relief as equity and justice may
4 require.

5 JURY DEMAND

6 Plaintiff requests trial by jury of all claims that can be so tried.

7
8 Respectfully submitted,

9 Dated: September 13, 2007

LAW OFFICES OF TERRY M. GORDON

10
11
12
13 By: 

14 TERRY M. GORDON
15 One of the Attorneys for RUSSELL
16 BRADBERRY, individually and on
17 behalf of a class of similarly situated
18 individuals
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EXHIBIT A

T-Mobile KOD #132420 Off Site Service Agreement

FOR OFFICE USE ONLY	Activation Date: <u>11/02/05</u>	<input type="checkbox"/> New <input type="checkbox"/> Add-on	Store Name: <u>Alamo Cellular</u>
	Account #:	Agent Code: <u>550790</u>	Location Phone: <u>557-733-0412</u>
	Onyx Code:	For Questions (rate plan changes or other functions) visit myT-Mobile at tmobile.com or call 811 (from T-Mobile wireless) or (800) 937-8997	
	Salesperson Name: <u>YOLLY, JLO VERA</u>		

CUSTOMER BUSINESS INFORMATION	Name: <u>RUSSEL BRADBERRY</u>	Driver's License # & State: <u>DLS52458 CA</u>
	Business Name:	E-Mail:
	Address: <u>3264 PEPPER GRASS LN</u>	Daytime Phone: <u>557-737-7284</u>
	City/State/Zip: <u>San Diego, CA 92115</u>	Date of Birth: <u>06/18/1982</u>
	City/State/Zip: <u>San Diego, CA 92115</u>	Fax:
	SSN or Federal Tax ID #: <u>570-711-5857</u>	Password:

SERVICE INFORMATION	LINE 1		Mobile #: <u>1000 9619 746 8094</u>	MINUTES INCLUDED: <u>600</u>	1st Month Pro-rated Charges: <u>39.99</u>
	Rate Plan: <u>7A</u>	Monthly Access Fee:	Overage Charges:	OPTIONAL FEATURES:	
	SIM #: <u>890120051003155349</u>		<input type="checkbox"/> Included: <u>WIRELESS</u>	<input type="checkbox"/> Added:	<u>4.99</u>
	IMEI #: <u>3505320119385</u>		<input type="checkbox"/> Included: <u>WIRELESS</u>	<input type="checkbox"/> Added:	
	Manufacturer/Model #: <u>OLYMPIA PHONE</u>		<input type="checkbox"/> Included:	<input type="checkbox"/> Added:	
	LINE 2		Mobile #:	MINUTES INCLUDED:	1st Month Pro-rated Charges:
	Rate Plan:	Monthly Access Fee:	Overage Charges:	OPTIONAL FEATURES:	
	SIM #:		<input type="checkbox"/> Included:	<input type="checkbox"/> Added:	
	IMEI #:		<input type="checkbox"/> Included:	<input type="checkbox"/> Added:	
	Manufacturer/Model #:		<input type="checkbox"/> Included:	<input type="checkbox"/> Added:	
LINE 3		Mobile #:	MINUTES INCLUDED:	1st Month Pro-rated Charges:	
Rate Plan:	Monthly Access Fee:	Overage Charges:	OPTIONAL FEATURES:		
SIM #:		<input type="checkbox"/> Included:	<input type="checkbox"/> Added:		
IMEI #:		<input type="checkbox"/> Included:	<input type="checkbox"/> Added:		
Manufacturer/Model #:		<input type="checkbox"/> Included:	<input type="checkbox"/> Added:		

Smart Access Customers Only:

You have \$150 spending limit. If your balance exceeds \$150, T-Mobile may suspend your service until you bring the balance below \$100. Even if suspended, you will continue to be liable for all charges incurred. Smart Access 15.000 Monthly Service Fee

PAYMENT	Security Deposit:	Check/Money order #:	Reference #:
	Method of Payment: <input type="checkbox"/> Cash <input type="checkbox"/> Check <input type="checkbox"/> Credit Card <input checked="" type="checkbox"/> Withdrawal From Bank Account <input type="checkbox"/> P.O. <input type="checkbox"/> Deferred Payment (Business Accounts Only)		
	Credit Card Information: <input type="checkbox"/> MC <input checked="" type="checkbox"/> Visa <input type="checkbox"/> AmEx <input type="checkbox"/> Other		
	Credit Card #: <u>4060 9560 0097 708</u> Exp. Date: <u>07/07</u> Authorization No: <u>055906</u>		
	Bank Account Information (Routing Transit #): <u>Account #:</u>		
	AUTOMATIC PAYMENT FROM CREDIT CARD OR BANK ACCOUNT: Please charge my monthly T-Mobile service fees to my credit card or bank account. By signing, I authorize T-Mobile to debit my account.		
CUSTOMER SIGNATURE	Signature: <u>[Signature]</u> Date: <u>02 NOV 05</u>		

THIS AGREEMENT INCORPORATES THE T-MOBILE TERMS AND CONDITIONS AND THE FOLLOWING BROCHURES AND MATERIALS:

Welcome Guide; Welcome Letter; Rates and Services; Coverage Brochure; Coverage Maps; Regional Plan Brochure; T-Mobile for Business Brochure; International Brochure; Handhelds Brochure; Added Value Brochure and other rate plan materials.

■ You have selected a plan with a fixed service term of at least 12 months. Our fixed term plans are subject to a \$200 early cancellation fee per line of service.

■ The monthly access fee and included minutes, if any, will be prorated for the number of days you are actually on service with T-Mobile for your first month.

■ There will be a one-time \$35.00 activation fee per line of service. A Regulatory Programs fee of \$66 per line/month applies.

■ **Cancellation and Return Policy:** You may cancel your service within 14 days of your service activation date (30 days in CA) without a cancellation fee. You may also return your phone to T-Mobile within the same time period for a refund. Other restrictions apply, please see Section 5 of the T-Mobile Terms and Conditions for a full text of the Cancellation and Return Policy.

■ We are required to use the residential or business street address you provided, which must be within our licensed service area, to determine certain taxes and fees. If you give us an address (such as a P.O. box) that is not a recognized street address, you will be assigned a default location for tax and fee calculation, which may result in a higher or lower charge for taxes and fees.

INITIAL TERM: 12 MONTHS. EARLY CANCELLATION FEE OF \$200 PER LINE OF SERVICE.

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SERVICE INFORMATION

LINE 1 - 600 Mobile # 609-446-8694 MINUTES INCLUDED 600 whenever
 Rate Plan 39.99 Monthly Access Fee _____ OVERAGE CHARGES _____ 1st MONTH PRO-RATED CHARGES 39.99
 SIM# 8901260310031355349 OPTIONAL FEATURES _____
 IMEI# 35655300119385 Included unl wks Added txt plan 4.99
 Manufacturer/Model # own phone Included _____ Added _____
 Included _____ Added _____

LINE 2 Mobile # _____ MINUTES INCLUDED _____
 Rate Plan _____ Monthly Access Fee _____ OVERAGE CHARGES _____ 1st MONTH PRO-RATED CHARGES _____
 SIM# _____ OPTIONAL FEATURES _____
 IMEI# _____ Included _____ Added _____
 Manufacturer/Model # _____ Included _____ Added _____
 Included _____ Added _____

LINE 3 Mobile # _____ MINUTES INCLUDED _____
 Rate Plan _____ Monthly Access Fee _____ OVERAGE CHARGES _____ 1st MONTH PRO-RATED CHARGES _____
 SIM# _____ OPTIONAL FEATURES _____
 IMEI# _____ Included _____ Added _____
 Manufacturer/Model # _____ Included _____ Added _____
 Included _____ Added _____

Smart Access Customers Only:

You have a \$150 spending limit. If your balance exceeds \$150, T-Mobile may suspend your service until you bring the balance below \$100. Even if suspended, you will continue to be liable for all charges incurred. Special Comments: 15.00 Non-refundable fee.

PAYMENT

Security Deposit _____ Check/Money order # _____ Reference # _____
 Method of Payment: ☐ Cash ☐ Check ☐ Credit Card ☒ Withdrawal From Bank Account ☐ P.O. ☐ Deferred Payment (Business Accounts Only)
 Credit Card Information: ☐ MC ☒ Visa ☐ AmEx ☐ Other _____
 Credit Card # _____ Exp. Date _____ Authorization No. _____
 Bank Account Information: Routing Transit # _____ Account # _____

AUTOMATIC PAYMENT FROM CREDIT CARD OR BANK ACCOUNT: Please charge my monthly T-Mobile service fees to my credit card or bank account. By signing, I authorize T-Mobile to debit my account.

Signature _____ Date 02 NOV 05

IMPORTANT CUSTOMER INFORMATION

- THIS AGREEMENT INCORPORATES THE T-MOBILE TERMS AND CONDITIONS AND THE FOLLOWING BROCHURES AND MATERIALS: Welcome Guide; Welcome Letter; Rates and Services; Coverage Brochure; Coverage Maps; Regional Plan Brochure; T-Mobile for Business Brochure; International Brochure; Handhelds Brochure; Added Value Brochure and other rate plan materials.
- You have selected a plan with a fixed service term of at least 12 months. Our fixed term plans are subject to a \$200 early cancellation fee per line of service.
- The monthly access fee and included minutes, if any, will be prorated for the number of days you are actually on service with T-Mobile for your first month.
- There will be a one time \$35.00 activation fee per line of service. A Regulatory Programs fee of 88¢ per line/month applies.
- Cancellation and Return Policy.** You may cancel your service within 30 days of your service activation date (30 days in CA) without a cancellation fee. You may also return your phone to T-Mobile within the same time period for a refund. Other restrictions apply, please see Section 5 of the T-Mobile Terms and Conditions for a full text of the Cancellation and Return Policy.
- We are required to use the residential or business street address you provided, which must be within our licensed service area, to determine certain taxes and fees. If you give us an address (such as a P.O. box) that is not a recognized street address, you will be assigned a default location for tax and fee calculation, which may result in a higher or lower charge for taxes and fees.

INITIAL TERM 12 MONTHS EARLY CANCELLATION FEE OF \$200 PER LINE OF SERVICE

Customer Initials AB I understand that if I terminate service for any reason prior to the Initial Term, I will pay the Early Termination Fee.
☐ You may list my number in a published directory

You authorize T-Mobile or its agents to obtain information about your credit history. You acknowledge you are of legal age, have provided true and complete information, have received a copy of the Agreement and, if signing or acting on behalf of a corporation or other entity, are fully authorized to sign on behalf and bind such entity. If your signature is unauthorized on behalf of such entity, you agree to be personally liable for unpaid amounts when due. You acknowledge receipt of the T-Mobile Terms and Conditions, which are incorporated into this Agreement, and agree to be bound by them. T-Mobile makes no warranties, express or implied regarding the service or equipment. All disputes are subject to mandatory arbitration under the T-Mobile Terms and Conditions.

Signature _____ Date 02 NOV 05 Title (Required for business): _____

White - Store

Grey - Customer

Pink - T-Mobile

Blue - Sales Representative

790375 12/04



Visalia Mall #2
2031 South Mooney Blvd
Space #5529
Visalia, CA 93277
1-800-716-1755

INVOICE # 1034253

NAME: RUSSELL BRADBERRY		DATE: 11/02/05		PAYMENT TYPE: Visa	
HOME PHONE: 5597397284		WORK PHONE:		SALES PERSON: HERRERA, MARY	
ADDRESS: 3264 PEPPERGRASS DR				SALES ID #: 3954	
CITY: SAN DIEGO STATE: CA		ZIP: 6891		INVENTORY LOCATION: 337	
PLAN CODE: T-CLASS CUSTOMERS		CC AUTH #: 011379		DEPARTMENT: VISALIA2	
CARRIER:					

QTY	ITEM#	DESCRIPTION	PLAN	CELL #	ESN / IMEI	UNIT PRICE	TOTAL
1	CONVERSION	ACTIVATION ONLY - CONVERSION	T-CLASS	6194468694		20.00	20.00
1	TACTFEE	T-CLASS ACT FEE (NONREFUNDABLE)				75.00	75.00

CUSTOMER HELP SURVEY		TERMS AND CONDITIONS OF SALE		SUBTOTAL 95.00	
<p><input type="checkbox"/> You have seen the personal coverage map and the salesperson verified that there is coverage in your area</p> <p><input type="checkbox"/> Your Vccemail can be set by pressing 123 send for T-Mobile and *86 send for Verizon</p> <p><input type="checkbox"/> You can reach your provider by dialing 611 for T-Mobile or *811 for Verizon</p> <p><input type="checkbox"/> Your first bill will include a one-time activation fee of \$_____ and your bill cycle will start on the _____ of the month. Your first bill will include a prorated amount of \$_____ for your partial month of service.</p> <p><input type="checkbox"/> I ACCEPT / DECLINE (Circle One) GWG Protection Program and fully understand my coverage. Coverage begins the 31st day and is valid for 1 year from purchase date. Any change to my esimel needs to be reported to wireless provider and to GWG.</p> <p><input type="checkbox"/> Unreported changes to handset will void coverage. GWG claim # is 1-888-980-8894.</p> <p><input type="checkbox"/> You can check your up-to-date minutes by dialing #848# (T-Mobile) or #646 (Verizon)</p> <p><input type="checkbox"/> You feel comfortable with the additional features added to your account and your representative has shown you how they work (Internet, text messaging, etc.)</p> <p><input type="checkbox"/> The salesperson has explained to you the _____ year agreement</p> <p><input type="checkbox"/> Your salesperson's name and number is _____</p>		<p><input type="checkbox"/> DEFECTIVE HANDSETS - Alert will exchange manufacture defective handset under 14 days over the counter. The returned phone must be complete with box, battery, charger, instruction manual. Anytime after 14 days the carrier will rapidly replace the handset through the mail. Alert employees are happy to assist with replacement arrangements.</p> <p><input type="checkbox"/> RETURN POLICY- Alert's return policy is 14 days for T-Mobile Phones and Service (30 days in CA) and 3 days for Verizon Phones and Service. All returns must include merchandise in resellable condition with the unmarked original box, instruction manual, battery, homecharger and original invoice. Accessories are non-refundable.</p> <p><input type="checkbox"/> REFUNDS may take 4-6 weeks to process.</p> <p><input type="checkbox"/> SECONDARY AGREEMENT- I understand the phone sold to me at a discounted price was based on the _____ year contract I signed with the carrier. I authorize my credit card to be charged \$350 per line if I terminate this contract for any reason prior to the contract expiration date.</p>		<p>TAX 0.00</p> <p>Exchange Credit</p> <p>TOTAL 95.00</p>	

FORM

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

ATTACHMENT CV-5012
CASE NUMBER: **107CV-094234**

READ THIS ENTIRE FORM

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANTS (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, in the Clerk's Office of the Court, within 30 days of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1too.htm>
- Rose Printing: 408-293-8177 or becky@rose-printing.com (there is a charge for forms)

For other local legal information, visit the Court's Self-Service website www.sccselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Neal A. Cabrinha Department: 10

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: FEB 05 2008 Time: 3:45pm in Department 10

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

- < Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator then helps the parties to explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not decide the dispute. The parties do.
- < Mediation may be appropriate when:
 - < The parties want a non-adversary procedure
 - < The parties have a continuing business or personal relationship
 - < Communication problems are interfering with a resolution
 - < There is an emotional element involved
 - < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

< Arbitration is a normally informal process in which the neutral (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give the parties a resolution of their dispute when they cannot agree by themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, is desired
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

< Neutral evaluation is an informal process in which a neutral party (the evaluator) reviews the case with counsel and gives a non-binding assessment of the strengths and weaknesses on each side and the likely outcome. The neutral can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

< Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

< Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; and sports, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, for information about ADR procedures, or for other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704



LAW OFFICES OF TERRY M. GORDON
THREE HARBOR DRIVE - SUITE 317
SAUSALITO, CALIFORNIA 94965

TO:

Corporation Service Company
d/b/a CSC - Lawyers Incorporating Service
P. O. Box 526036
Sacramento, California 95852

